IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4257 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANKAR RAVJI THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4257 of 2002

MRS JYOTSNA K PATEL for Petitioner No. 1

Mr. A.Y. Kogje, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/06/2002

ORAL JUDGEMENT

1. The petitioner- detenu has challenged the legality and validity of the order of detention dated 6.12.2001 passed by the Commissioner of Police, Ahmedabad city, by invoking jurisdiction of this Court under

Article 226 of the Constitution of India.

2. Ld. counsel Mrs. Jyotsana Patel has taken me through the entire memo of the petition and has pointed out that she has challenged the legality and validity of the impugned order of detention on number of grounds, but fairly submitted that she would concentrate her arguments on one ground only viz. that the order of detention has been passed in undue haste and, therefore, this Court should interfere with the same as the same is passed without proper application of mind. Absence of proper application of mind vitiates the legality and validity of the order of detention as per the settled legal position. The detaining authority has to consider whether the petitioner can be branded as a "dangerous person" ? The list of events given by the petitioner indicates that the statements of the witnesses were recorded on 28.11.2001 and 29.11.2001 and the same were verified on 5.12.2001 and impugned order of detention came to be passed on 6.12.2001.

3. Having considered the documents produced along with the petition and relevant dates, it is amply clear that the papers must have been considered in the latter part of 5.12.2001 and detention order under challenge is passed on 6.12.2001. Thus, there is undue haste in passing order of detention and amounts to mechanical consideration of papers resulting into non-application of mind.

4. Ld. counsel Mrs. Patel appearing for the petitioner detenu has submitted that the present case is covered by the decision of this Court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) v/s State of Gujarat & Others, 2000(3) GLR 2696 (Vol.XLI (3). Ld. Single Judge of this Court, after referring to the decision in the case of Kalidas C.Kahar v/s State of Gujarat, 1993(2) GLR 1659, has held that exercise of powers by the detaining authority was mechanical and devoid of application of mind and, therefore, detention order requires to be quashed. I have considered the above-cited decisions and if relevant dates are considered, I am satisfied that the present case is squarely covered by the aforesaid decisions as facts of both the cases are similar in nature. It is also submitted that in number of decisions, this Court has consistently quashed and set aside the orders of detention where there is non-applicaton of mind or mechanical application of mind. Under the circumstances, without entering into the merits of the other grounds, impugned order of detention requires to be quashed and set aside on this sole ground. The State has even not filed formal reply to resist relevant grounds raised in the petition. It is, therefore, held that impugned order

of detention is bad-in-law and suffers from the vice of undue haste and suffers from non-application of mind.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 6.12.2001 passed by the Commissioner of Police, Ahmedabad City is hereby quashed and set aside and detenu Shankar Ravji Thakor is hereby ordered to be set at liberty forthwith if not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

17.6.2002 [C. K. BUCH, J]

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